

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

JODI LENTINI )

)

VS. )

W.C.C. 06-00182

)

AMALGAMATED DEVELOPMENT INC. )

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the petitioner/employee's claim of appeal in which she challenges the finding of the trial judge as to the nature and description of the work-related injury she sustained on October 29, 2005. After thorough review of the medical evidence presented in this matter, we grant the employee's appeal and amend the description of the injury.

In her original petition, the employee alleged that she sustained injuries to her neck, back, left shoulder, and left arm on or about October 29, 2005 while lifting heavy trays during the course of her employment as a banquet server at the Crown Plaza Hotel. At the pretrial conference, the trial judge determined that she sustained a thoracic strain on October 29, 2005 resulting in partial incapacity from October 30, 2005 and continuing. The employee claimed a trial from the pretrial order.

The primary issue at trial was the description of the injury. The employee argued that, based upon the testimony of Dr. Randall Updegrave, the description should read thoracic outlet syndrome, rather than thoracic strain. The trial judge found that the evidence preponderated in

favor of describing the injury as a thoracic strain. The employee claimed an appeal from this determination, alleging that the trial judge overlooked, misunderstood, or misconstrued the uncontradicted testimony of Dr. Updegrove who diagnosed thoracic outlet syndrome.

In reviewing the decree of a trial judge, we are constrained by the standard of review set forth in Rhode Island General Laws § 28-35-28(b):

“The findings of the trial judge on factual matters shall be final unless an appellate panel finds them to be clearly erroneous.”

In undertaking our review, we are limited to the record made before the trial judge and are barred from conducting our own *de novo* review of the medical evidence without initially concluding that the trial judge was clearly wrong, or misconceived or overlooked material evidence.

Diocese of Providence v. Vaz, 679 A.2d 879 (R.I. 1996); Blecha v. Wells Fargo Guard-Company Serv., 610 A.2d 98 (R.I. 1992). In the present matter, we find that the trial judge misconceived the testimony of Dr. Updegrove and erroneously found that the employee sustained a thoracic strain, rather than thoracic outlet syndrome.

The employee testified that upon picking up an unusually heavy tray of dishes, she felt pain in her upper back and shoulder blades. She also felt discomfort in her chest when breathing. She went to the emergency room at Kent Hospital the following day and was diagnosed with a thoracic/cervical strain. In the reports from the hospital, there is a notation regarding radiation to the arm which we cannot decipher. However, the employee denied that she initially experienced any radiation of pain or tingling or numbness in her arms. She was referred to Kent Occupational Health for further treatment.

Ms. Lentini was seen by a physician’s assistant at Kent Occupational Health on October 31, 2005. His assessment was that she was suffering from a thoracic strain. He referred her to physical therapy and released her to modified work with no heavy bending, lifting or twisting.

When she returned on November 4, 2005, she reported to the nurse practitioner who saw her that her condition had markedly improved, although she continued to have some pain in her upper back between her shoulder blades.

During the following week, the employee began to experience increased symptoms, particularly after her therapy sessions. On November 11, 2005, she informed the nurse practitioner that she had some tingling in her arms as well as radiation of pain across her mid-back and down her arms. As a result of these complaints, physical therapy was discontinued. Ms. Lentini was seen a final time at Kent Occupational Health by a physician's assistant on November 16, 2005. Her symptoms persisted, including pain in the left mid-back and numbness in her arms during the night. The diagnosis was thoracic strain with trigger points.

Dr. Randall L. Updegrove, a specialist in occupational medicine, evaluated the employee on December 2, 2005. Her complaints included pain in the left side of the neck and cervical thoracic area with radiation to the left arm as well as paresthesias in the second and third fingers of the left hand. After conducting a physical examination, the doctor's initial diagnosis was:

“ . . . left-sided cervical thoracic pain with some features that were suggestive of radiculitis, that is, nerve root irritation from potentially a disc problem in the neck versus a variant of thoracic outlet syndrome or brachial plexus irritation.” Pet. Exh. 3, p. 8.

He recommended an MRI of the cervical spine to rule out a disc injury. This test was done on December 12, 2005 and did not reveal any evidence of nerve root irritation or significant narrowing around the spinal cord or nerve roots. Armed with the results of the MRI and a second physical examination on December 14, 2005, Dr. Updegrove stated that the employee was likely suffering from brachial plexus irritation, which is synonymous with thoracic outlet syndrome. In subsequent reports, the doctor referred to the diagnosis as cervicothoracic pain with probable thoracic outlet syndrome variant.

In his deposition, Dr. Updegrave described the difference between thoracic strain and thoracic outlet syndrome, or brachial plexus irritation.

“Well, thoracic strain would be just limited to soreness to the upper back that might increase with pulling maneuvers, twisting of the back, that sort of thing. Whereas thoracic outlet involves compression of the brachial plexus and would extend the symptoms then to include symptoms of nerve root or nerve irritation such as numbness, tingling. . . .” Id. at 13.

The doctor made very clear that his diagnosis did not include thoracic strain. *See* Id. at 21. He explained that thoracic outlet syndrome involving brachial plexus irritation occurs when the scalene muscles on the side of the neck go into spasm and compress the brachial plexus, which is an extension of the nerve roots emanating from the neck traveling down the arm into the hand. In support of this diagnosis, Dr. Updegrave noted that the tingling into the employee’s hand was reproduced by elevating her hand above her shoulder and she had marked tenderness and spasm in the scalene muscles on the left side of her neck. Id. at 24.

Dr. Updegrave did acknowledge that the employee did not exhibit all of the classic symptoms of thoracic outlet syndrome. In particular, the diminishment of her pulse with the Adson’s test was minimal and the radiation of pain and tingling more often occurs in the fourth and fifth fingers, rather than the second and third fingers as in the employee’s case.

The trial judge’s analysis of the doctor’s testimony was as follows:

“The issue before the Court as stated above is the correct nature of the employee’s injury, that being a thoracic strain or a thoracic outlet syndrome. The doctor explained in depth the nature and meaning of both conditions. The doctor conceded that the employee did not have all the classic symptoms that he described of the thoracic outlet syndrome and more significantly stated that her diminishment and her pulse with the Adson’s test was ‘minimal.’ He also indicated that the thoracic outlet syndrome was restricted to her left side only. It was his statement that the finding of the diminished pulse could be the result of the swelling or

tenderness and resulting compression to the muscles of her cervical spine.

“Dr. Updegrove’s opinion is the only opinion presented before the Court to determine what is the actual nature and description of the employee’s work-related injury. Significantly, the doctor conceded that she did not have all the classic symptoms that he described of the thoracic outlet syndrome. As a result, it appears to the Court that because of this dearth of symptoms, the evidence preponderates in the direction that the employee’s injury is a thoracic strain.”

The trial judge specifically noted that the symptoms were confined to the employee’s left side only, as though this was not typical. However, Dr. Updegrove testified that thoracic outlet syndrome, or brachial plexus irritation, is usually restricted to one (1) side of the body, as in the employee’s case. Pet. Exh. 3, p. 27. The trial judge also pointed out that the doctor stated that the diminishment in her pulse with the Adson’s maneuver could be related to swelling and compression of the muscles of the cervical spine, apparently in the belief that this tended to be more consistent with a strain rather than thoracic outlet syndrome. In fact, Dr. Updegrove testified that his diagnosis of thoracic outlet syndrome, or brachial plexus irritation, was caused by inflammation of the scalene muscles on the left side of the neck resulting in compression of the brachial plexus. Id. at 25-26. In further support of his diagnosis of thoracic outlet syndrome rather than thoracic strain or cervical nerve root compression, the doctor pointed to the reproduction of tingling in her hand with raising her left arm on several office visits, and the tenderness and spasm detected in the scalene muscles on the left side of her neck.

In his discussion of other symptoms that may be associated with thoracic outlet syndrome, Dr. Updegrove distinguished between two (2) different versions of the syndrome – neurogenic and vascular. He described symptoms of the vascular version, which the employee did not have. He also explained the symptoms of the neurogenic version, and those symptoms matched those of Ms. Lentini, although she had only a mild case. *See Id.* at 26-27. It appears

that the trial judge, in citing the “dearth” of symptoms experienced by Ms. Lentini, considered all of the symptoms noted by the doctor for both versions of thoracic outlet syndrome.

We believe that the trial judge misconstrued portions of the testimony of Dr. Updegrove in arriving at the conclusion that the employee sustained a thoracic strain. The doctor rejected the diagnosis of thoracic strain due to the additional symptoms of pain radiating down the left arm particularly with arm elevation and frequent paresthesias in the second and third fingers. These symptoms, confirmed during the physical examinations, are indicative of more than muscle soreness caused by a thoracic strain. We find that the testimony of Dr. Updegrove clearly substantiates his diagnosis of thoracic outlet syndrome.

Based upon the foregoing, the employee’s appeal is granted. In accordance with our decision, a new decree shall enter containing the following findings and orders:

1. That the petitioner has proven by a fair preponderance of the credible evidence that she sustained a work-related injury on October 29, 2005, which arose out of and in the course of her employment with the respondent, connected therewith and referable thereto, of which injury the respondent had notice.

2. That the injury sustained by the employee is thoracic outlet syndrome.

3. That the employee’s average weekly wage is One Hundred Seventy-four (\$174.00) Dollars.

4. That the employee had no one dependent upon her for support.

5. That the employee received payments made pursuant to a Non-Prejudicial Agreement and the pretrial order entered in this matter.

It is, therefore, ordered:

1. That the respondent pay weekly compensation benefits for partial incapacity from October 30, 2005 to January 30, 2006, at which time the employee's average weekly wage was Two Hundred and 75/100 (\$200.75) Dollars as opposed to One Hundred Seventy-four (\$174.00) Dollars at the time of the injury which indicates that her average weekly wage is in excess of that which she was earning prior to her injury.

2. That the respondent is ordered to pay all reasonable medical, hospital, and surgical bills in accordance with the provisions of the Workers' Compensation Act.

3. That the respondent is to receive a credit for all payments made pursuant to the Non-Prejudicial Agreement and the pretrial order.

4. That the respondent shall reimburse William A. Filippo, Esq., attorney for the employee, the sum of Ninety-nine and 00/100 (\$99.00) Dollars for the cost of the trial transcript and Twenty-five and 00/100 (\$25.00) Dollars for the cost of the appellate filing fee.

5. That the respondent shall reimburse William A. Filippo, Esq., attorney for the employee, the sum of One Hundred Seventy-six and 40/100 (\$176.40) Dollars for the cost of the deposition of Dr. Randall L. Updegrave, and the sum of One Hundred Forty-five and 25/100 (\$145.25) Dollars for a copy of the deposition of the employee.

6. That the respondent shall pay an expert witness fee to Dr. Randall L. Updegrave in the amount of Five Hundred and 00/100 (\$500.00) Dollars for his deposition testimony.

7. That the respondent shall pay a counsel fee to William A. Filippo, Esq., in the sum of Three Thousand Four Hundred and 00/100 (\$3,400.00) Dollars for services rendered at the trial level, and the sum of One Thousand Three Hundred and 00/100 (\$1,300.00) Dollars for services rendered at the appellate level.

We have prepared and submit herewith a new decree in accordance with our decision.

The parties may appear on \_\_\_\_\_ at 10:00 a.m. to show cause, if any  
they have, why said decree shall not be entered.

Bertness and Sowa, JJ. concur.

ENTER:

\_\_\_\_\_  
Olsson, J.

\_\_\_\_\_  
Bertness, J.

\_\_\_\_\_  
Sowa, J.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

JODI LENTINI )

)

VS. )

W.C.C. 06-00182

)

AMALGAMATED DEVELOPMENT, INC.)

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard before the Appellate Division upon the appeal of the petitioner/employee from a decree entered on April 28, 2006.

Upon consideration thereof, the appeal of the employee is granted and in accordance with the decision of the Appellate Division, the following findings of fact are made:

1. That the petitioner has proven by a fair preponderance of the credible evidence that she sustained a work-related injury on October 29, 2005, which arose out of and in the course of her employment with the respondent, connected therewith and referable thereto, of which injury the respondent had notice.

2. That the injury sustained by the employee is thoracic outlet syndrome.

3. That the employee's average weekly wage is One Hundred Seventy-four (\$174.00) Dollars.

4. That the employee had no one dependent upon her for support.

5. That the employee received payments made pursuant to a Non-Prejudicial Agreement and the pretrial order entered in this matter.

It is, therefore, ordered:

1. That the respondent pay weekly compensation benefits for partial incapacity from October 30, 2005 to January 30, 2006, at which time the employee's average weekly wage was Two Hundred and 75/100 (\$200.75) Dollars as opposed to One Hundred Seventy-four (\$174.00) Dollars at the time of the injury which indicates that her average weekly wage is in excess of that which she was earning prior to her injury.

2. That the respondent is ordered to pay all reasonable medical, hospital, and surgical bills in accordance with the provisions of the Workers' Compensation Act.

3. That the respondent is to receive a credit for all payments made pursuant to the Non-Prejudicial Agreement and the pretrial order.

4. That the respondent shall reimburse William A. Filippo, Esq., attorney for the employee, the sum of Ninety-nine and 00/100 (\$99.00) Dollars for the cost of the trial transcript and Twenty-five and 00/100 (\$25.00) Dollars for the cost of the appellate filing fee.

5. That the respondent shall reimburse William A. Filippo, Esq., attorney for the employee, the sum of One Hundred Seventy-six and 40/100 (\$176.40) Dollars for the cost of the deposition of Dr. Randall L. Updegrave, and the sum of One Hundred Forty-five and 25/100 (\$145.25) Dollars for a copy of the deposition of the employee.

6. That the respondent shall pay an expert witness fee to Dr. Randall L. Updegrave in the amount of Five Hundred and 00/100 (\$500.00) Dollars for his deposition testimony.

7. That the respondent shall pay a counsel fee to William A. Filippo, Esq., in the sum of Three Thousand Four Hundred and 00/100 (\$3,400.00) Dollars for services rendered at the trial level, and the sum of One Thousand Three Hundred and 00/100 (\$1,300.00) Dollars for services rendered at the appellate level.

Entered as the final decree of this Court this                    day of

BY ORDER:

\_\_\_\_\_  
John A. Sabatini, Administrator

ENTER:

\_\_\_\_\_  
Olsson, J.

\_\_\_\_\_  
Bertness, J.

\_\_\_\_\_  
Sowa, J.

I hereby certify that copies of the within decision and final decree were mailed to  
William A. Filippo, Esq., and Kevin B. Reall, Esq., on

\_\_\_\_\_